

The Honorable Ricardo S. Martinez  
Trial Date: June 20, 2023

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

CLAUDIA CLEMENS,

Plaintiff,

v.

SAMSUNG ELECTRONICS AMERICA,  
INC.,

Defendant.

Case No. 2:22-cv-00722-RSM

**STIPULATED PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: (a) Sensitive personal identifying information, including, but not limited

to, the personal identifiers listed in LCR 5.2(a), individuals' sensitive employment records, and documents which are protected by the Health Insurance Portability and Accountability Act; (b) Defendant's non-public financial, accounting, personnel, commercial, proprietary data or applications, or other proprietary or trade secret information; (c) Non-public financial, accounting, commercial, proprietary data or applications, or other private or confidential information of any current or former customer or business partner of Defendant; (d) Business or marketing plans of Defendant; (e) Information over which the designating party is obligated to maintain confidentiality by contract or otherwise; and (f) Information expressly designated as, and reasonably believed by the designating party to be, confidential in nature.

### 3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

### 4. ACCESS TO AND USE OF CONFIDENTIAL INFORMATION

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

1 (a) the receiving party's counsel of record in this action, as well as employees of  
2 counsel to whom it is reasonably necessary to disclose the information for this litigation;

3 (b) the officers, directors, and employees (including in house counsel) of the  
4 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree  
5 that a particular document or material produced is for Attorney's Eyes Only and is so designated;

6 (c) experts and consultants to whom disclosure is reasonably necessary for this  
7 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

8 (d) the court, court personnel, and court reporters and their staff;

9 (e) copy or imaging services retained by counsel to assist in the duplication of  
10 confidential material, provided that counsel for the party retaining the copy or imaging service  
11 instructs the service not to disclose any confidential material to third parties and to immediately  
12 return all originals and copies of any confidential material;

13 (f) during their depositions, witnesses in the action to whom disclosure is  
14 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
15 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
16 transcribed deposition testimony or exhibits to depositions that reveal confidential material must be  
17 separately bound by the court reporter and may not be disclosed to anyone except as permitted under  
18 this agreement;

19 (g) the author or recipient of a document containing the information or a  
20 custodian or other person who otherwise possessed or knew the information; and

21 (h) mediators engaged by the parties.

22 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
23 referencing such material in court filings, the filing party shall confer with the designating party, in  
24 accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
25 remove the confidential designation, whether the document can be redacted, or whether a motion to  
26 seal or stipulation and proposed order is warranted. During the meet and confer process, the

designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

#### 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure

1 or discovery material that qualifies for protection under this agreement must be clearly so designated  
2 before or when the material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic documents and  
4 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
5 the designating party must affix the word “CONFIDENTIAL” to each page that contains  
6 confidential material. If only a portion or portions of the material on a page qualifies for protection,  
7 the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate  
8 markings in the margins).

9 (b) Testimony given in deposition or in other pretrial proceedings: the parties and  
10 any participating non-parties must identify on the record, during the deposition or other pretrial  
11 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
12 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the  
13 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
14 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
15 at trial, the issue should be addressed during the pre-trial conference.

16 (c) Other tangible items: the producing party must affix in a prominent place on  
17 the exterior of the container or containers in which the information or item is stored the word  
18 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the  
19 producing party, to the extent practicable, shall identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
21 designate qualified information or items does not, standing alone, waive the designating party’s right  
22 to secure protection under this agreement for such material. Upon timely correction of a designation,  
23 the receiving party must make reasonable efforts to ensure that the material is treated in accordance  
24 with the provisions of this agreement.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS  
26

1        6.1    Timing of Challenges. Any party or non-party may challenge a designation of  
 2 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
 3 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
 4 or a significant disruption or delay of the litigation, a party does not waive its right to challenge a  
 5 confidentiality designation by electing not to mount a challenge promptly after the original  
 6 designation is disclosed.

7        6.2    Meet and Confer. The parties must make every attempt to resolve any dispute  
 8 regarding confidential designations without court involvement. Any motion regarding confidential  
 9 designations or for a protective order must include a certification, in the motion or in a declaration  
 10 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
 11 affected parties in an effort to resolve the dispute without court action. The certification must list the  
 12 date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face  
 13 meeting or a telephone conference.

14        6.3    Judicial Intervention. If the parties cannot resolve a challenge without court  
 15 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
 16 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion  
 17 in any such motion shall be on the designating party. Frivolous challenges, and those made for an  
 18 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may  
 19 expose the challenging party to sanctions. All parties shall continue to maintain the material in  
 20 question as confidential until the court rules on the challenge.

21    7.    PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
 22 LITIGATION

23        If a party is served with a subpoena or a court order issued in other litigation that compels  
 24 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party  
 25 must:  
 26

1 (a) promptly notify the designating party in writing and include a copy of the  
2 subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue  
4 in the other litigation that some or all of the material covered by the subpoena or order is subject to  
5 this agreement. Such notification shall include a copy of this agreement; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
7 the designating party whose confidential material may be affected.

8 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
10 material to any person or in any circumstance not authorized under this agreement, the receiving  
11 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
12 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
13 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
14 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
15 Bound” that is attached hereto as Exhibit A.

16 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
17 MATERIAL

18 When a producing party gives notice to receiving parties that certain inadvertently produced  
19 material is subject to a claim of privilege or other protection, the obligations of the receiving parties  
20 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
21 modify whatever procedure may be established in an e-discovery order or agreement that provides  
22 for production without prior privilege review. The parties agree to the entry of a non-waiver order  
23 under Fed. R. Evid. 502(d) as set forth herein. The parties agree to protection of privileged and  
24 otherwise protected documents against claims of waiver (including as against third parties and in  
25 other federal and state proceedings) as follows:  
26

1 (a) The disclosure or production of documents by a producing party subject to a  
 2 legally recognized claim of privilege, including without limitation the attorney-client privilege and  
 3 the work-product doctrine, to a receiving party, shall in no way constitute the voluntary disclosure  
 4 of such document.

5 (b) The inadvertent disclosure or production of any document in this action shall  
 6 not result in the waiver of any privilege, evidentiary protection, or other protection associated with  
 7 such document as to the receiving party or any third parties, and shall not result in any waiver,  
 8 including subject matter waiver, of any kind.

9 (c) If, during the course of this litigation, a party determines that any document  
 10 produced by another party is or may reasonably be subject to a legally recognizable privilege or  
 11 evidentiary protection ("Protected Document"):

12 (i) the receiving party shall: (A) refrain from reading the Protected  
 13 Document any more closely than is necessary to ascertain that it is privileged or otherwise protected  
 14 from disclosure; (B) immediately notify the producing party in writing that it has discovered  
 15 documents believed to be privileged or protected; (C) specifically identify the Protected Documents  
 16 by Bates number range or hash value; and, (D) within ten days of confirmation by the producing  
 17 party that it asserts privilege with respect to the identified documents, the receiving party, return,  
 18 sequester, or destroy all copies of such Protected Documents, along with any notes, abstracts, or  
 19 compilations of the content thereof. To the extent that a Protected Document has been loaded into  
 20 a litigation review database under the control of the receiving party, the receiving party shall have  
 21 all electronic copies of the Protected Document extracted from the database. Where such Protected  
 22 Documents cannot be destroyed or separated, they shall not be reviewed, disclosed, or otherwise  
 23 used by the receiving party. Notwithstanding, the receiving party is under no obligation to search  
 24 or review the producing party's documents to identify potentially privileged or work product  
 25 Protected Documents.



1 (ii) If the producing party intends to assert a claim of privilege or other  
2 protection over documents identified by the receiving party as Protected Documents, the producing  
3 party will, within ten days of receiving the receiving party's written notification described above,  
4 inform the receiving party of such intention in writing and shall provide the receiving party with a  
5 log for such Protected Documents that is consistent with the requirements of the Federal Rules of  
6 Civil Procedure, setting forth the basis for the claim of privilege or other protection. In the event  
7 that any portion of a Protected Document does not contain privileged or protected information, the  
8 producing party shall also provide to the receiving party a redacted copy of the document that omits  
9 the information that the producing party believes is subject to a claim of privilege or other  
10 protection.

11 (d) If, during the course of this litigation, a party determines it has produced a  
12 Protected Document:

13 (i) the producing party may notify the receiving party of such inadvertent  
14 production in writing, and demand the return of such documents. Such notice shall be in writing;  
15 however, it may be delivered orally on the record at a deposition, promptly followed up in  
16 writing. The producing party's written notice will identify the Protected Document inadvertently  
17 produced by Bates number range or hash value, the privilege or protection claimed, and the basis for  
18 the assertion of the privilege and shall provide the receiving party with a log for such Protected  
19 Documents that is consistent with the requirements of the Federal Rules of Civil Procedure, setting  
20 forth the basis for the claim of privilege or other protection. In the event that any portion of the  
21 Protected Document does not contain privileged or protected information, the producing party shall  
22 also provide to the receiving party a redacted copy of the document that omits the information that  
23 the producing party believes is subject to a claim of privilege or other protection.

24 (ii) The receiving party must, within ten days of receiving the producing  
25 party's written notification described above, return, sequester, or destroy the Protected Document  
26 and any copies, along with any notes, abstracts, or compilations of the content thereof. To the extent

1 that a Protected Document has been loaded into a litigation review database under the control of the  
2 receiving party, the receiving party shall have all electronic copies of the Protected Document  
3 extracted from the database.

4 (e) To the extent that the information contained in a Protected Document has  
5 already been used in or described in other documents generated or maintained by the receiving party  
6 prior to the date of receipt of written notice by the producing party as set forth in paragraphs (c)(ii)  
7 and d(i), then the receiving party shall sequester such documents until the claim has been resolved. If  
8 the receiving party disclosed the Protected Document before being notified of its inadvertent  
9 production, it must take reasonable steps to retrieve it.

10 (f) The receiving party's return, sequestering, or destruction of Protected  
11 Documents as provided herein will not act as a waiver of the requesting party's right to move for the  
12 production of the returned, sequestered, or destroyed documents on the grounds that the documents  
13 are not, in fact, subject to a viable claim of privilege or protection. However, the receiving party is  
14 prohibited and estopped from arguing that:

15 (i) the disclosure or production of the Protected Documents acts as a  
16 waiver of an applicable privilege or evidentiary protection;

17 (ii) the disclosure of the Protected Documents was not inadvertent;

18 (iii) the producing party did not take reasonable steps to prevent the  
19 disclosure of the Protected Documents; or

20 (iv) the producing party failed to take reasonable or timely steps to rectify  
21 the error.

22 (g) Either party may submit Protected Documents to the Court under seal for a  
23 determination of the claim of privilege or other protection. The producing party shall preserve the  
24 Protected Documents until such claim is resolved. The receiving party may not use the Protected  
25 Documents for any purpose absent this Court's order.

1 (h) Upon a determination by the Court that the Protected Documents are  
 2 protected by the applicable privilege or evidentiary protection, and if the Protected Documents have  
 3 been sequestered rather than returned or destroyed by the receiving party, and subject to the  
 4 exceptions outlined in Paragraph 10 below, the Protected Documents shall be returned or destroyed  
 5 within 10 days of the Court's order. The Court may also order the identification by the receiving  
 6 party of Protected Documents by search terms or other means.

7 (i) Nothing contained herein is intended to, or shall serve to limit a party's right  
 8 to conduct a review of documents, data (including electronically stored information), and other  
 9 information, including without limitation, metadata, for relevance, responsiveness, and/or the  
 10 segregation of privileged and/or protected information before such information is produced to  
 11 another party.

12 (j) By operation of the parties' agreement, the parties are specifically afforded  
 13 the protections of Fed. R. Evid. 502(e).

#### 14 10. NON TERMINATION AND RETURN OF DOCUMENTS

15 (a) Within 60 days after the termination of this action, including all appeals, each  
 16 receiving party, upon written request of the producing party, must return all confidential material to  
 17 the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties  
 18 may agree upon appropriate methods of destruction.

19 (b) If Confidential material or Protected Documents have been loaded into any litigation  
 20 review database, the attorney for the party using such database shall have the responsibility, upon  
 21 written request by the producing party, of ensuring that all such Confidential material or Protected  
 22 Documents, including all associated images and native files, are extracted from such databases  
 23 (including any associated staging databases) and destroyed. "Destroyed" shall mean deletion of  
 24 documents from all databases, applications, and/or file systems in a manner such that they are not  
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1 readily accessible without the use of specialized tools or techniques typically used by a forensic  
2 expert.

3 (c) Counsel of record for the parties may retain copies of any part of the Confidential  
4 material or Protected Documents produced by others that has become part of counsel's official file  
5 of this litigation as well as abstracts or summaries of materials that reference Confidential material  
6 or Protected Documents that contain counsel's mental impressions or opinions. Such copies shall  
7 remain subject to the terms of this Protective Order.

8 (d) The parties, counsel of record for the parties, and experts or consultants for a party  
9 shall not be required to return or to destroy any Confidential material or Protected Documents to the  
10 extent such information is (i) stored on media that is generally considered not reasonably accessible,  
11 such as disaster recovery backup tapes, or (ii) only retrievable through the use of specialized tools  
12 or techniques typically used by a forensic expert; provided that to the extent any Confidential  
13 material or Protected Documents are not returned or destroyed due to the foregoing reasons, such  
14 Confidential material or Protected Documents shall remain subject to the confidentiality obligations  
15 of this Protective Order.

16 The confidentiality obligations imposed by this agreement shall remain in effect until a  
17 designating party agrees otherwise in writing or a court orders otherwise.

18 11. COMPUTATION OF TIME

19 The computation of any period of time prescribed or allowed by this Order shall be governed  
20 by the provisions for computing time set forth in FRCP 6.

21  
22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

23 DATED: December 13, 2022

s/ Stephen P. Connor

Attorneys for Plaintiff

24  
25 DATED: December 13, 2022

s/ Ryan P. Hammond

Attorneys for Defendant

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
4 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
5 documents, including the attorney-client privilege, attorney work-product protection, or any other  
6 privilege or protection recognized by law.

7  
8 DATED this 14<sup>th</sup> day of December, 2022.

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11 RICARDO S. MARTINEZ  
12 UNITED STATES DISTRICT JUDGE  
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of  
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued  
 by the United States District Court for the Western District of Washington on [date] in the case of  
*Claudia Clemens v. Samsung Electronics America, Inc.*, Case No. 2:22-cv-00722-RSM.

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order  
 and I understand and acknowledge that failure to so comply could expose me to sanctions and  
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any  
 information or item that is subject to this Stipulated Protective Order to any person or entity except  
 in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western  
 District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order,  
 even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

1 **CERTIFICATE OF SERVICE**

2 I am a resident of the State of Washington. I am over the age of eighteen years and not a  
 3 party to the within-entitled action. My business address is One Union Square, 600 University  
 4 Street, Suite 3200, Seattle, Washington 98101. I hereby certify that on December 14, 2022, I  
 5 electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system,  
 6 which will send notification of such filing to the following:

7 **Attorneys for Plaintiff**

8 Stephen P. Connor, WSBA #14305  
 9 Anne-Marie E. Sargent, WSBA #27160  
 10 Derik R. Campos, WSBA #47374  
 11 CONNOR & SARGENT PLLC  
 12 921 Hildebrand Lane NE, Suite 240  
 13 Bainbridge Island, WA 98110  
 14 Tel: (206) 200-8744  
 15 [steve@cslawfirm.net](mailto:steve@cslawfirm.net)  
 16 [aes@cslawfirm.net](mailto:aes@cslawfirm.net)  
 17 [derik@cslawfirm.net](mailto:derik@cslawfirm.net)  
 18 [rosanne@cslawfirm.net](mailto:rosanne@cslawfirm.net)

14 I certify under penalty of perjury under the laws of the United States and of the State of  
 15 Washington that the foregoing is true and correct.

16 Executed on December 14, 2022, at Seattle, Washington.

18 /s/ Karen Fiumano Yun

19 Karen Fiumano Yun

20 [kfiumano@littler.com](mailto:kfiumano@littler.com)

LITTLER MENDELSON, P.C.

21 4862-3766-1251.1 / 116494-1001